

Before the  
**United States Senate**  
Committee on Commerce, Science and Transportation  
Subcommittee on Surface Transportation

**Hearing on Bus Safety**

September 18, 2008

**Testimony of**

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**Introduction**

Mr. Chairman and members of the Subcommittee, my name is Peter J. Pantuso and I serve as the President and Chief Executive Officer of the American Bus Association (ABA). The ABA and its 3800 members would like to thank you, Mr. Chairman for your leadership in convening this hearing. The ABA appreciates the opportunity to testify on the issue of bus and motor carrier safety and to work with you, the Committee and the Congress on the reauthorization of the nation's transportation programs in the coming year.

We also come before you today representing the interests of the entire industry including the National Tour Association and the United Motorcoach Association. Both organizations are equally concerned about safe motorcoach travel and each represents significant motorcoach companies. For its part the ABA is the national trade association

for the independent, private over-the-road bus industry. ABA is a voluntary organization comprised of companies that operate buses and provide related services to the motorcoach industry. Our bus operator members, of which there are 850, operate 40 to 45 foot touring coaches with baggage bays under a passenger compartment. These operators also represent nearly sixty-five percent of all motorcoaches on the road today in North America. Nearly all of these operator members provide charter and tour service (like Coach America located in Texas) commuter service (like Academy Bus Lines in New Jersey) and some 100 ABA member companies provide regular route scheduled service like Trailways and Greyhound. The American motorcoach industry is diverse but its bedrock is small business men and women. ABA's average member has eight motorcoaches or fewer. Our operator members provide local, regional and national services. Together ABA members provide all manner of bus services and provide in excess of seven hundred million passenger trips annually, a number which approximates the number of passengers carried by U.S. airlines in any given year. In addition, we move more passengers in two weeks than Amtrak does in a year.

Chief among our duties is providing charter and tour services to the nation. We bring families, school groups and senior citizens together for tours, family reunions, festivals, sporting events, fairs and to see the beauty of our country. ABA members will provide these services safely. We do so because it is a part of ABA's mission, i.e., to provide safe trips to all our passengers and because our families, neighbors and friends ride with us every day. ABA believes that there is no margin for error in safety; we must be safe and even one accident tarnishes the industry. The problem today is that there has been a spate of accidents by bus companies that should not have been on the road.

## **ABA and Bus Safety**

ABA promotes safety in the industry in several ways. First, ABA long ago established the Bus Industry Safety Council (BISC). This organization is composed of the safety directors of bus companies and key representatives from bus industry suppliers, and state and federal government agencies. BISC meets at least twice a year to discuss and provide guidance and best practices on industry safety issues. At BISC's July meeting there were discussions and panels led by or participated in by the Federal Motor Carrier Safety Administration (FMCSA), National Highway Traffic Safety Administration (NHTSA) and the National Transportation Safety Board (NTSB). It is important to note that BISC is open to all bus operators and all those interested in bus safety whether or not they are members of the ABA.

ABA's commitment to safety goes beyond BISC. ABA led the fight against dangerous roadside inspections which required buses to unload their passengers by the side of the road in traffic while buses were inspected. The fact of youngsters and senior citizens along the road while cars and trucks passed by at 70 miles per hour was an accident waiting to happen. Earlier this summer, ABA was instrumental in securing the passage of H.R. 3985 (P.L. 110-219) which requires FMCSA to certify the willingness and ability of motor carriers to abide by the Americans with Disabilities Act (ADA) before the agency grants that carrier authority to operate. And we advanced that legislation in the face of some opposition within the bus industry. Indeed, before drafting

that legislation, ABA sued the FMCSA seeking to enforce the ADA, a suit the FMCSA and the Department of Transportation vigorously opposed.

In addition, through the ABA, the independent, private bus industry is a member of FMCSA's Motor Carrier Safety Advisory Committee (MCSAC). This federal advisory committee meets each quarter to evaluate and provide recommendations to the FMCSA Administrator on safety issues. Moreover, the MCSAC engages in determining how best to extend the agency's resources to advance safe bus and truck operations. ABA participates in the MCSAC with the American Trucking Associations, the Advocates for Highway and Auto Safety, Road Safe America and several state law enforcement agencies. Several ABA recommendations to FMCSA, for example, increasing bus inspections, have been included in the FMCSA's list of recommendations for the reauthorization of the nation's transportation programs scheduled for next year. Reauthorization looms large in ABA's plans for safer buses and safer operators and in ABA's view enforcement of current bus safety standards is key to safe bus operators.

### **Enforcement is Critical**

ABA believes strongly that the heart of the problem of accidents and fatalities are unsafe operators and the lack of FMCSA's and state enforcement officials' attention to a motor carriers' safety fitness prior to granting authority to operate. There is also a lack of cooperation between the federal government and the states in getting unfit bus companies off of the nation's highways. It is difficult to see the FAA granting an application for an air carrier without a prior review of its fitness to operate but that is essentially what happens to bus applicants.

Today, a person seeking authority to operate need only file an application, pay a fee of three hundred dollars and provide proof of insurance (five million dollars); an applicant gains operating authority before it can be shown that he or she is a safe operator. Any inspection of a carrier's equipment, personnel or records can take up to 18 months after authority is granted, a regulatory scheme that puts the cart before the horse and opens the public to unsafe operators.

FMCSA has released statistics which reveal that in 2007 the number of applications for new and expanded regular route authority amounted to almost 50% of the industry. And still there is no investigation of fitness before authority is granted. Recently, following the horrific accident in Texas, FMCSA Administrator Hill froze the processing of all applications for passenger carrier authority while he addresses the issues surrounding the unprecedented number of applications. We applaud Administrator Hill for taking this bold step. This demonstrates that FMCSA itself has focused on the need to address the entry issue.

How important is it to certify a carrier's safety fitness prior to granting authority? ABA has determined that over the last decade each of the most serious bus accidents were the product of carriers who were either operating illegally or had serious pre-existing safety issues. Inspecting a carrier before it begins operations and requiring periodic inspections thereafter would help reduce this toll of lives and accidents. ABA believes that any examination of a carrier's safety fitness must include a review of the operator's safety management program and a physical inspection of the operator's vehicles. Our proposed inspection process is virtually identical to the process now used by the Department of Defense (DOD) to vet motor carriers which seek to transport

military personnel. The DOD contracts with third party inspectors to carry out these inspections, something we have long advocated to FMCSA.

Second, FMCSA must implement the authority given it in SAFETEA-LU to deny authority to individuals who start up new bus companies after already developing bad safety records at prior companies. It appears that the most recent accident was the product of this type of operator.

Third, Congress should require that States enforce any interstate shutdown orders from FMCSA and cancel any intrastate operating authority issued to bus companies whose interstate operating authority is terminated by FMCSA or whose interstate application is denied on fitness grounds. This is a particular problem in states with extensive intrastate operations. The states must become more aggressive in confiscating the license plates and vehicle registrations for non-compliant carriers.

Fourth, Congress should require that FMCSA and the states ensure that carriers applying for private charter authority do not use that authority to provide common carrier, scheduled or fixed route service open to the general public. This is a particular problem in the Border States. Even though cross-border, fixed route bus authority grants are frozen under NAFTA, charter applications are not. Thus, carriers on both sides of the border get charter authority from FMCSA and then run fixed route service with no effort to prevent these illegal operations.

Fifth, the Motor Carrier Safety Assistance Program (MCSAP) provides the states with federal dollars to support a bus inspection program. In ABA's view only a handful of states have an effective bus inspection program. The states must demonstrate that they have effective bus inspection programs. States are provided funds through the Motor

Carrier Safety Assistance Program (MCSAP), to provide these programs. Last year federal MCSAP grants exceeded two hundred million dollars.

Lastly, for many years ABA has supported a provision that would require FMCSA to establish a medical registry. Such a registry would provide bus operators with an approved list of qualified medical providers who will not certify a driver's fitness for duty if the driver is unfit. Currently, a driver could "shop" for a medical professional who knows little about transportation or those medical conditions that bear upon safe operations. As a result, a medically unqualified driver would be certified fit for duty.

### **Reauthorization Legislation**

As this Committee moves toward reauthorization, please keep in mind that ABA is eager to work with you on all manner of transportation issues. We are available to anyone who calls with a request for help in making buses safer. It was such a call from the late Congressman Paul Gillmor (R-Ohio) which started us on the road to H.R. 4690, a bipartisan bill that provides a comprehensive plan for bus safety. The industry, ABA, Greyhound Lines, the unions and the United Motorcoach Association (UMA), and others worked for several months to craft this bill. After the death of Congressman Gillmor, Congressman Bill Shuster and Congresswoman Eddie Bernice Johnson came together in a bipartisan effort to introduce the bill that is now H.R. 4690. Other House members have joined this coalition and ABA continues to support this bill. The bill provides time for NHTSA to research safety issues, time for any new standards to be implemented by the industry, including the bus manufacturers who would have to retool and perhaps

reengineer their process and it provides funds so that bus companies can retrofit their buses in a timely fashion.

But H.R. 4690 is neither our only legislative effort nor did our safety initiatives begin two years ago. ABA also actively supports H.R. 3820, a bill to provide tax credits to motor carriers which install advanced safety equipment (e.g. lane departure warning, electronic stability controls) in their buses. ABA believes that proper bus safety legislation will materially aid our goal for safer bus operators and operations and we commend these bills for your consideration as we move into the reauthorization process.

One thing is certain. While bus safety is vital, the issue is also complicated. The safety of any vehicle is dependent on many issues. This is no less true of motorcoaches. Several factors must be weighed before any person; agency or organization can pronounce a bus safe or unsafe or say with certainty that any one change will make the bus safer. I have already noted that the skill, ability, resources and willingness of the driver and bus company are of prime importance. Likewise, the type, make and model of the motorcoach are issues that must be considered. Obviously, newer motorcoaches are built differently than older models and may have more safety features. The type of crash a bus is involved in is also important. For example, seat belts may help passengers in so-called “roll over” crashes but in other type of crashes a combination of compartmentalization and other safety improvements may be just as effective.

Bus window design may also be a factor. Bus engineers have noted that fatalities in bus crashes began largely with the advent of larger bus windows, hence the need for NHTSA to study advanced window glazing techniques. In considering fire suppression



one issue is where to place any additional fire suppression gear on a motorcoach and at what cost to other bus safety systems?

Reauthorization provides this Committee with a rare opportunity to craft a comprehensive bus safety bill that all parties and transportation stakeholders can support. And here ABA would like to commend Committee ranking member Senator Hutchison for her efforts in fostering such a bill. In the Committee's continued efforts on behalf of this goal, ABA asks you to keep my testimony and concerns in mind regarding any bus safety legislation. Those concerns may be grouped around three issues: implementation, retrofit standards and liability.

First, any bill that requires NHTSA to promulgate standards for seatbelts, advanced window glazing and improved firefighting equipment should require that NHTSA research and test for these issues prior to promulgating standards for these buses. Further, there must be sufficient time for bus manufacturers, operators and maintenance professionals to meet the new standards.

Clearly, new NHTSA requirements must be based on what research and testing determines is appropriate, and NHTSA should have three years to do the testing and initiate and complete the rulemaking. Then NHTSA must be required to develop standards for each of these items and their installation on both new and retrofitted buses. The new and retrofit standards are likely to be quite different, given the vast array of existing over-the-road buses. Retrofit standards will be complicated by the various motorcoach makes, model and manufacturers and the fact that a motorcoach normally has a 25 year life cycle. NHTSA will also have to take into account different flooring, anchors and seat construction. One size retrofit standards will not fit all buses. The

complicated issue of retrofitting buses also points up the need for federal financial assistance in order to retrofit buses. Unlike the transit industry our buses are not federally funded or maintained with federal money. We are an industry composed of small businesses and the imposition of a seatbelt mandate for every bus will be a heavy one. It will be impossible to fulfill without federal funds.

In addition, a too brief implementation phase-in time for all buses is unreasonable and unworkable. First, in one year, the four major world bus manufacturers (only one is a domestic company) produce a combined total of nearly 2000 motorcoaches for the U.S. market. Currently, there are 40,000 motorcoaches on the U.S. highways. The bus manufacturers will probably need more than a year just to retool and re-engineer their product to comply with the new law. Thus, the vast majority of buses would have to be retrofitted. This will be an extremely expensive and burdensome undertaking. Ironically, an unreasonably tight timeframe could also mean less safe buses overall since it would divert resources from new bus purchases, which may be safer than older buses.

Installing seat belts is not just a matter of bolting a belt to a seat. It may be, depending on the type of belt and bus, a matter of redesigning the seat, strengthening the bus floor or changing the seat configuration. Safety cannot simply be added on to any equipment, it must be engineered into that equipment. In H.R. 4690, bus manufacturers were given 3 years to retool their plants and redesign their products to meet the new standards. The operator phase-in period is that mandated by Congress in the implementation of the bus provisions of the Americans with Disabilities Act. That is, that bus fleets be 50% compliant within six years and fully compliant within 12 years. We believe that these time frames are appropriate for the private bus industry.

One other concern ABA and its members have about any bus safety legislation is that of liability protection for bus operators and manufacturers. H.R. 4690 addresses this issue by providing liability protection for bus operators and bus makers during the law's phase in period. Without such protection bus operators and manufacturers would be sued for not having seatbelts even though the law would not yet require the buses to be so equipped. Moreover, during the phase-in period of the federal regulations it is important that bus manufacturers be protected from states imposing their own regulations. Without such protection, interstate motor carriers could be subjected to inconsistent or even contradictory standards concerning all manner of safety equipment. When Congress mandated the use of air bags in passenger vehicles it provided just such protection for automobile manufacturers; that is, during the phase in period, manufacturers or owners could not be sued for not having air bags or be subject to inconsistent state requirements. That is exactly what ABA seeks with any new legislation.

### **NHTSA Bus Crash Testing Program**

ABA's efforts to prevent bus crashes and to lessen the damage from such accidents began with the NTSB's Bus Crashworthiness hearing in 1998. Since then ABA has asked NHTSA to apply to Congress for authority and funds to begin a bus crash testing program. Then, as now, ABA wants to determine the safety of the buses we operate and how to discover ways to make them safer. After years of distaining such a program because of the industry's low number of fatalities, an average of 22 a year, late last year NHTSA finally began such a program, the first in its history. The program, studying the need for new regulations on fire prevention and suppression, emergency

gress, roof strength standards and occupant protection is a step in the right direction. In fact, ABA would wish the program be more rigorous. However, ABA and its members are in partnership with the agency in this effort. We provide resources, including technical expertise and equipment for the program. Our experts are in regular contact with the NHTSA staff. ABA hopes for a timely analysis of the reams of data that just one crash test produced and that the industry will get answers to the questions of whether, and if so, how the buses we depend on can be made safer.

Now that NHTSA has begun its research and testing program, ABA believes that it needs time to complete its work before it can provide scientifically correct conclusions as to the future safety needs of buses. One cannot rush safety research and one must look at all the evidence. For example, recent bus crashes involved equipment in which seatbelts were provided, yet the injuries and fatalities seem (and the evidence is yet unclear) to be as bad as those crashes with buses not equipped with seat belts. This question raises other questions, for example, the responsibility for ensuring seat belt use. None of us know the answers to these questions because the testing is ongoing, the data still unclear. It is not a question for ABA alone. Last year, Texas passed a law requiring seat belts on all buses which carry students from kindergarten to Grade 12. According to news reports, there is now an effort in the legislature to re-look at that law in part because there is no science or testing to support the law's conclusion that seat belts are necessary or at least not harmful in all accidents.

## **Conclusion**

Hopefully in addition to providing the Committee with the facts it needs to legislate bus safety during reauthorization, my testimony will also dispel a myth about the industry's promotion of and interest in safety. That myth of "if the industry really wanted to do it, it would have done so already." Nothing could be further from the truth. What standards would the industry use for installing, for example, seat belts? What type of belts and on what type of equipment? And what if the federal agencies then determine that the standards used were incorrect? Since 1966, it is the federal government's role to set these standards. Heretofore, it has chosen not to act. How can any one say that the industry should have acted in the government's stead?

ABA's view is that safety is too important to be left to intuition, chance or even educated guesses. Safety demands rigorous testing and specific answers to the questions surrounding the development, installation, and use of any safety equipment in a variety of circumstances. Safety also demands rigorous enforcement of the regulatory tools available and the development of new tools as needed. But those answers and those new tools cannot be rushed solely because we wish to have them sooner. It is for these reasons that we work with NHTSA on the bus crash testing program, we work with FMCSA on demanding ADA accessible transportation and upgrading the skills of bus operators, and we work with NTSB at every bus accident investigation. It is safe to say that ABA will work with anyone who calls and has an idea for safer buses, operations and educating the public on how to pick a safe bus operator. For those reasons and, as I stated at the beginning of my testimony, for the simple reason that our families, friends

and colleagues ride with us every day, we are happy to work with you Mr. Chairman and with the Committee and with the Congress for a safer bus industry.

Once again, on behalf of the 700 million passengers who ride with us every year and the 3800 ABA member companies and organizations, I thank you for allowing us to testify and I am happy to answer any questions.

Peter J. Pantuso  
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